

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE**

**September 2, 2005**

<b>IN RE:</b>	)	
	)	
<b>TARIFF FILING BY BELL SOUTH</b>	)	<b>DOCKET NO.</b>
<b>TELECOMMUNICATIONS, INC. TO REDUCE</b>	)	<b>04-00416</b>
<b>THE NUMBER OF CALL ALLOWANCES FOR</b>	)	
<b>DIRECTORY ASSISTANCE AND TO EXTEND</b>	)	
<b>EXEMPTIONS TO DIRECTORY ASSISTANCE CALL</b>	)	
<b>COMPLETION SERVICE - Tariff Number 2004-1434</b>	)	

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**ORDER DECLINING TO CONVENE CONTESTED CASE AS TO BELL SOUTH  
TARIFF NO. 2004-1434 AND DENYING CONSUMER ADVOCATE'S  
COMPLAINT AND PETITION TO INTERVENE**

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This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 10, 2005 and again on March 14, 2005 for consideration of the Tariff Filing to Reduce the Number of Call Allowances for Directory Assistance and to Extend Exemptions to Directory Assistance Call Completion Service – Tariff Number 2004-1434 filed by BellSouth Telecommunications, Inc. ("BellSouth") and the *Complaint and Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate").

**BACKGROUND**

**Directory Assistance Charges in Tennessee**

Prior to 1997, Directory Assistance ("DA") was free to consumers in Tennessee.

The majority of the Directors<sup>1</sup> initially approved directory assistance charges at the request of United Telephone Southeast ("UTSE") in 1997 in Docket No. 96-01423, based on the majority's decision that directory assistance is a non-basic service under state law.<sup>2</sup> Following a contested case proceeding, the Authority approved UTSE's tariff for a \$0.29 DA charge and required UTSE to amend its tariff to provide six (6) free DA inquiries per month rather than three (3) as proposed by UTSE, based upon the finding that many telephone numbers were not published in the printed telephone directory.<sup>3</sup>

The TRA's decision in Docket No. 96-01423 was appealed to the Tennessee Court of Appeals by the Consumer Advocate. While UTSE agreed with the TRA's decision that DA is a non-basic service, UTSE pursued its own appeal, arguing before the Court that the TRA had exceeded its authority by requiring UTSE to amend its tariff. The court issued its opinion on July 18, 2002, finding that the TRA had correctly determined that DA is a non-basic service and that UTSE could charge for DA. The court rejected UTSE's argument and held that the TRA acted within its statutory authority in requiring UTSE to file an amended tariff to provide for six (6) DA inquiries per month and free unlimited DA for disabled customers and residential subscribers age sixty-five (65) or older.

In 1999, BellSouth filed a tariff to begin charging for DA. The Consumer Advocate filed a petition and complaint for declaratory and injunctive relief. Because BellSouth conformed its tariff to include the same \$0.29 charge, six (6) call allowance and identical terms and conditions as previously approved for UTSE, the Authority declined to convene a contested case, approved

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<sup>1</sup> Director Kyle concluded that directory assistance service was appropriately classified as an essential basic service and did not vote with the majority

<sup>2</sup> Tenn Code Ann § 65-5-108(a), passed as a part of the Tennessee Telecommunications Act of 1995, prohibits a basic service from being increased during the initial four years after an incumbent local exchange company elects to fall under price regulation

<sup>3</sup> See *United Telephone Southeast, Inc Tariff No 96-201 to Reflect Annual Price Cap Adjustment*, Docket No 96-01423, *Order Approving in Part and Denying in Part Tariff 96-201* (September 4, 1997)

the tariff and denied the Consumer Advocate's Petition.<sup>4</sup> The Consumer Advocate appealed the TRA's decision to approve the tariff, seeking a reversal of the Authority decision on several grounds, including that the Authority abused its discretion by refusing to convene a contested case. After rejecting the other grounds asserted by the Consumer Advocate, the Tennessee Court of Appeals addressed the contested case issue, holding in favor of the TRA.

The Authority has the discretion to decide whether to convene a contested case to consider complaints filed with the agency. *See Consumer Advocate Div. v. Greer*, 967 S.W.2d 759, 763-64 (Tenn. 1998). The Authority's decision in this case was based on its finding that the issues presented by the Consumer Advocate in its petition had been previously decided by the Authority, and that the Consumer Advocate's breach of claim contract failed to state a claim because the proposed agreement was based on a contingency that never occurred. Under these circumstances, we find no abuse of discretion in the Authority's decision.<sup>5</sup>

Subsequently, BellSouth's DA charge was increased to \$0.59 per call with existing exemptions remaining in place. Effective September 15, 2003, BellSouth increased its DA rate from \$0.29 per call to \$0.40 (TRA Tariff 2003-902). Thereafter, on September 10, 2004, BellSouth increased its DA rate from \$0.40 per call to \$0.59 per call (TRA Tariff 2004-1029). These DA tariffs went into effect without a request for a contested case or petition for intervention being filed.

### **Travel of this Docket**

On December 1, 2004, BellSouth filed Tariff Number 2004-1434 ("Tariff") with a proposed effective date of December 31, 2004. Through this Tariff, BellSouth sought to reduce the number of free DA requests from six (6) per month to three (3) per month. As a result, BellSouth subscribers would be assessed the \$0.59 DA fee beginning with the fourth (4th) DA request each month. Physically and/or visually impaired persons and residential subscribers who

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<sup>4</sup> See *BellSouth Telecommunications, Inc. Tariff to Implement a \$0.29 Directory Assistance Charge, Docket No. 99-00391, Order Approving Tariff and Denying Consumer Advocate's Petition* (July 29, 1999).

are sixty-five (65) years or older would continue to receive unlimited DA requests free of charge. The Tariff also contains modifications to BellSouth's Directory Assistance Call Completion ("DACC") services.<sup>6</sup> The Tariff provides DACC service to customers with physical and/or visual disabilities free of charge, otherwise the tariffed rate for DACC service of \$0.45 per completed call would be applicable to these disabled consumers. BellSouth provided customer notification via publication in newspapers of general circulation throughout Tennessee on December 1, 2004. The Tariff was suspended until January 11, 2005 at the December 13, 2004 Authority Conference to allow the Authority time to obtain additional information regarding the Tariff

On December 28, 2004, the Consumer Advocate filed a *Complaint and Petition to Intervene* ("Complaint") in this Docket, requesting that the TRA convene a contested case proceeding. In its *Complaint*, the Consumer Advocate argued that BellSouth's proposal for reducing the monthly DA call allowance from six (6) to three (3) is inconsistent with previous TRA decisions in Docket Nos. 96-01423 and 99-00391 and is also contrary to the interests of Tennessee consumers. The Consumer Advocate also stated that free DACC should be extended not only to physically and visually impaired customers, as set forth in BellSouth's proposed tariff, but also to all consumers ages sixty-five (65) years or older.

At the regularly scheduled Authority Conference held on January 10, 2005, the panel voted unanimously to allow BellSouth's Tariff to go into effect. The panel determined that, notwithstanding the filing of the *Complaint*, the Consumer Advocate did not request a suspension of the Tariff nor did a reason exist for suspending the Tariff on the Authority's own

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<sup>5</sup> *Consumer Advocate Division v Tennessee Regulatory Authority*, 2001 WL 575570 \* 6 (Tenn Ct App , May 30, 2001)

<sup>6</sup> DACC service allows subscribers to have telephone numbers requested via DA automatically dialed by the Operator System

motion. Indeed, the public interest would be promoted by allowing free DACC service to disabled consumers without further delay. Notwithstanding the Tariff going into effect, BellSouth was required to file a response to the Consumer Advocate's *Complaint* no later than January 27, 2005. The panel also voted to place this docket back on an Authority Conference after receiving the response or upon expiration of time to file the response to determine whether to convene a contested case.

On January 27, 2005, BellSouth filed *BellSouth Telecommunications, Inc.'s Response to Consumer Advocate's Complaint and Petition to Intervene* ("*BellSouth's Response*"), urging the Authority to deny the *Complaint* on the grounds that the Consumer Advocate had failed to assert any legal argument in support of its position.<sup>7</sup> BellSouth argued that the decisions in TRA Docket Nos. 96-01423 and 99-00391 did not establish a general rule or binding precedent requiring six (6) free DA calls per month. Instead, according to BellSouth, the orders in those dockets reflected a balance of consumers' interests in the context of those specific tariffs. BellSouth asserted that the Tariff filed in this docket likewise balances the interests of consumers and the needs of business.<sup>8</sup>

**STATUTORY STANDARD FOR SUSPENSION OF A TARIFF OR CONVENING A CONTESTED CASE**

In allowing the Tariff to become effective, the Authority made a finding that the Consumer Advocate did not demonstrate a sufficient showing, or otherwise meet the statutory requirements, to warrant suspension of BellSouth's Tariff. Those statutory requirements are set forth in Tenn. Code Ann. § 65-5-101(c) (2004). That subsection provides that tariffs filed by ILECs shall become effective twenty-one (21) days after filing subject to certain requirements.

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<sup>7</sup> *BellSouth Telecommunications, Inc.'s Response to Consumer Advocate's Complaint and Petition to Intervene*, p. 6 (January 27, 2005)

<sup>8</sup> *Id.* at 5

Tenn. Code Ann. § 65-5-101(c)(3) sets forth the statutory criteria for suspension of tariffs and the convening of a contested case proceeding for tariffs as follows:

(3) Tariffs may be suspended pending such hearing on showing by a complaining party that

(i) The complaining party has filed a complaint before the authority alleging with particularity that the tariff violates a specific law;

(ii) The complaining party would be injured as a result of the tariff and has specifically alleged how it would be so injured; and

(iii)(A) The complaining party has a substantial likelihood of prevailing on the merits of its complaint;

(B) The authority may suspend a tariff pending a hearing, on its own motion, upon finding such suspension to be in the public interest. The standard established herein for suspension of tariffs shall apply at all times including the twenty-one (21) or one (1) day period between filing and effectiveness;

(C) The standard established herein for suspension of tariffs shall not be applicable in any way to the determination by the authority of whether to convene a contested case to consider revocation of a tariff. The authority may choose to convene a contested case, or decline to convene a contested case, at its own discretion, to promote the public interest. The standard established in this subsection (c) for suspension of tariffs shall not be applicable in any way to any decision by the authority regarding revocation of a tariff;<sup>9</sup>

#### **FINDINGS AND CONCLUSIONS**

Prior to BellSouth's Tariff becoming effective, BellSouth's residential and business subscribers in Tennessee were not charged for the first six (6) DA requests in each month. Beginning with the seventh DA request in any one month, however, subscribers were assessed a charge of \$0.59 per call. Although customers with physical and visual disabilities received free unlimited DA under BellSouth's previous tariffs, these customers were required to disconnect the call and then place a separate call to the number provided. This procedure required the disabled customer to either write down the number or remember it prior to making the call. These

customers had the option of having the operator complete the call to the telephone number requested via DA, but BellSouth charged these disabled customers \$0.45 per call.

Through the Tariff, BellSouth makes this DACC service free to disabled customers. Upon effectiveness of this Tariff, disabled customers can access DA free of charge and have the call completed automatically by the operator without charge. The Authority finds that extending free DACC to these disabled consumers, especially those with limited sight, promotes the public interest.

Coupled with the above tariff change for disabled customers, BellSouth also reduced the number of monthly DA call allowances for residential and business customers from six (6) to three (3). The Authority approved DA charges for BellSouth in 1999 on the condition that it would provide six (6) free monthly requests for directory information, which was based largely upon the fact that many telephone numbers are not in the printed telephone directory. The Authority finds that three free DA calls per month is reasonable and does not harm the public interest, especially given the fact that BellSouth is continuing to provide DA free to physically and visually disabled customers and to customers sixty-five (65) years or older that request such an exemption.

The *Complaint* filed by the Consumer Advocate does not allege violation of a specific state law. Instead, the *Complaint* alleges, "The Tariff is contrary to [the TRA's] policy and is contrary to the interests of Tennessee consumers."<sup>10</sup> The Consumer Advocate argues in the *Complaint* that BellSouth's Tariff represents a change to the Authority's established policy regarding call allowances and the Tariff, as filed, is inconsistent with existing policy set forth in TRA orders. The *Complaint* further alleges that the Tariff is contrary to the interests of persons

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<sup>9</sup> Tenn Code Ann § 65-5-101(c)(3)

<sup>10</sup> *Complaint and Petition to Intervene*, p 2 (December 28, 2004)

age 65 or older "...because it limits the simplified and improved free directory assistance call completion service to qualifying visually or physically disabled subscribers or qualifying visually or physically disabled people who live at the residence of a subscriber on a permanent basis."<sup>11</sup>

Tenn. Code Ann. § 65-5-101(c) specifically provides that the Authority may decide to or not to convene a contested case based on promotion of public interest. As evidenced in this Order, the issues surrounding directory assistance charges and exceptions thereto have been litigated in several dockets before the TRA and in the Tennessee Court of Appeals. A majority of the panel found that the Consumer Advocate did not make a sufficient showing to convene a contested case for the purpose of revoking the Tariff or extending exemptions to classes of consumers beyond those set forth in the Tariff. Further, the public interest is promoted by maintaining the Tariff in effect.

Based on the foregoing findings and conclusions, the majority of the panel voted not to convene a contested case and to deny the Consumer Advocate's *Complaint* because the Consumer Advocate had failed to meet the statutory criteria for convening a contested case under Tenn. Code Ann. § 65-5-101(c) (2004).<sup>12</sup> The majority determined further that the public interest did not dictate that the Authority convene a contested case.

**IT IS THEREFORE ORDERED THAT:**

1. The Authority declines to convene a contested case because it finds that Tariff No. 04-1434 filed by BellSouth Telecommunications, Inc. promotes the public interest.

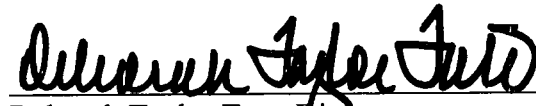
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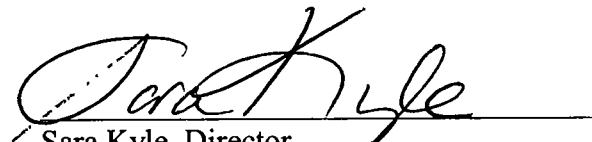
<sup>11</sup> *Id* at 3

<sup>12</sup> Director Jones did not vote with the majority. Instead, he filed a dissent



2. The *Complaint and Petition to Intervene* filed by the Consumer Advocate is denied for failure to meet the statutory requirements for convening a contested case as set forth in Tenn. Code Ann. § 65-5-101(c).

  
Deborah Taylor Tate, Director

  
Sara Kyle, Director

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Ron Jones, Director